

Government of the District of Columbia



Office of the Attorney General

Testimony of
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***Public Oversight Roundtable
on
Minors and Underage Persons
in Nightclubs and Taverns***

Committee on Public Works and the Environment
Jim Graham, Chair
Council of the District of Columbia

January 25, 2007

Room 500
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, D.C. 20004
2:00 P.M.

Good afternoon Councilmember Graham, other members of the Council present today, and guests. I am Linda Singer, Acting Attorney General for the District of Columbia. Thank you for inviting me to appear before the Committee. But before I begin, I'd like to express my heartfelt sympathy to Taleshia Ford's family. I cannot begin to imagine the depths of your grief, but I can tell you that I am committed to making sure that our young people are safe and can frequent establishments without fear of harm.

The presence of underage patrons at nightclubs is one dimension of this tragedy. I agree that minors under the age of 21 should be prohibited from entering into taverns and nightclubs which serve alcohol; however, it was not alcohol that caused Taleshia Ford's death. Rather, another young person has been struck down in their prime because a weapon was allowed inside a crowded nightclub. While this tragedy has raised the need to consider whether minors should be permitted in nightclubs that serve alcohol, it has also emphasized how critical it is to find a more aggressive way to ensure that weapons are not brought into clubs. I would therefore urge the Committee to explore adopting a law that would require ABC establishments that meet certain clearly defined objective criteria to have armed MPD officers outside to screen for weapons. As you know, MPD currently has a reimbursable detail unit in place that is paid for on a voluntary basis by on-premises establishments – primarily nightclubs. I do believe that it makes sense to re-evaluate, and possibly expand, MPD's role to require that certain establishments be required to fund such a detail if certain objective criteria are met. I am working closely with Chief Lanier to develop these criteria which, of course, must carefully take into consideration any inconvenience to clubs, patrons and possible drain on MPD resources. I hope the Committee will allow me time to sift through the legalities of such a proposal for your consideration at a later date.

PRESENCE OF MINORS IN ABC ESTABLISHMENTS

It is blatantly clear that this tragedy demands a review of current District law which allows persons under the age of 21 to enter into ABC licensed establishments. As I stated at the outset, I do support a change in this measure, allowing a general prohibition against minors under the age of 21 years of age entering taverns and nightclubs. My Office has reviewed similar laws in Pennsylvania and Delaware. Both jurisdictions have prohibitions preventing persons under 21 years of age from entering certain types of ABC establishments. Although Pennsylvania's law allows for an exception when the minor is accompanied by a parent, legal guardian, or under proper supervision by someone at least twenty-five (25) years of age who is directly responsible for the care and conduct of the minor while on the premises, and who keeps the minor within his or her sight or hearing, I would not support such an exception here. The bottom line is that a nightclub where alcohol is served is not a safe or appropriate environment for a minor, regardless of who he or she is with. Indeed, there is nothing to suggest that Saturday's tragedy would have been averted if Miss Ford was accompanied by an adult.

Another important consideration in crafting a provision that prohibits the presence of minors in taverns and nightclubs is to avoid unduly restricting minors from entering ABC

establishments where alcohol is merely incidental to the facility's primary purpose. For example, persons under the age of 21 years of age should not be completely restricted from entering an establishment that holds: (1) an on-premises restaurant license (such as a diner or sit down restaurant); (2) an on-premises hotel license; or (3) a *Class CX* multipurpose license such as the Verizon Center, Convention Center, colleges and universities. One possibility used by other jurisdictions to address this issue would be to prohibit minors from sitting at the bar area of these types of establishments, or prohibiting minors from entering the premises after a certain hour.

You should be aware that current atypical nightclub licensees, such as the "Spy Museum" and the "Ronald Reagan Building" would need to change their license class (most likely to a multipurpose facility) if they wanted to allow minors. The ABC Board has assured me that it is properly equipped and willing to handle any necessary license class changes to implement this law change if enacted. Licensees such as Smarta Broadway that have more typical nightclub operations would generally not qualify for a class change to a multipurpose facility license.

SALE OF ALCOHOL TO MINORS

I would also like to address two questions raised by Councilmember Graham in relation to service of alcohol to minors in clubs: (1) whether DC law prohibits the service of alcohol to minors; and (2) whether establishments which serve alcohol to minors can be prosecuted if the police or an ABRA inspector does not observe the sale of alcohol to a person under the age of 21. I will address each question in turn.

First, District law does, in fact, prohibit the service of alcohol to persons under the age of 21. Violations can be prosecuted civilly or criminally under a number of provisions.

- The sale, delivery, service or any other dispensing or offer of alcoholic beverages to persons under 21 is prohibited under D.C. Code § 25-781(a),¹ D.C. Code § 25-781(c),² or D.C. Code § 25-785.³

¹ “(a) The sale or delivery of alcoholic beverages to the following persons is prohibited:
(1) A person under 21 years of age, either for the person's own use or for the use of any other person, except as provided in § 25-784(b) . . . “

² “(c) A licensee or other person shall not, at a licensed establishment, give, serve, deliver, or in any manner dispense an alcoholic beverage to a person under 21 years of age, except as provided in § 25-784(b).”

³ “(a) A person who is not a licensee shall not, within the District, purchase an alcoholic beverage for the purpose of delivering the alcoholic beverage to a person who is under 21 years of age.

(b) A person who is a licensee shall not, within the District, offer, give, provide, or otherwise make available an alcoholic beverage to a person who is under 21 years of age, except if necessary to allow the person to perform lawful employment responsibilities that require the person to have temporary possession of alcoholic beverages.”

- Consumption of alcohol by persons under 21 is also prohibited under D.C. Code § 25-781⁴ and D.C. Code § 25-1002(a).⁵ Only a licensee may be charged with violations of D.C. Code § 25-781 for permitting such consumption on the premises, which is subject to a civil infraction⁶ or a misdemeanor penalty, but not both. *See* D.C. Code § 25-831(a) and (d). The ABC Board is also authorized to take action against a licensee who violates D.C. Code § 25-781.

Violations of D.C. Code § 25-1002(a) for the actual drinking/consumption are subject only to civil penalties against the minor. *See* D.C. Code § 25-1002(c)(4)(D).⁷ (This was de-criminalized by the Council in 2004).

- The possession, attempted purchase or actual purchase of alcohol by a person under the age of 21 is also prohibited under D.C. Code § 25-1002(a).⁸ These violations are subject either to civil penalties or a misdemeanor penalty against the minor, but not both. *See* D.C. Code § 25-1002.⁹

Second, while having a police officer or ABRA inspector witness a sale of alcohol to a minor is ideal, there are a number of ways in which a case could be developed in the absence of having an MPD or ABRA witness if MPD or ABRA were to conduct an investigation. A patron in the bar, or even the minor who was sold the alcohol, could testify. Admittedly, such cases are more difficult to develop and require the cooperation of witnesses that may not choose to cooperate. One enhancement to existing laws that the Committee may want to consider is the creation of a legal presumption that if a minor

⁴ “(b) A retail licensee shall not permit at the licensed establishment the consumption of an alcoholic beverage by any of the following persons:

(1) A person under 21 years of age . . . “

⁵ “No person who is under 21 years of age shall purchase, attempt to purchase, possess, or *drink* an alcoholic beverage in the District, except as provided under subchapter IX of Chapter 7.” (emphasis added).

⁶ Violations of D.C. Code § 25-781 are subject to civil infractions which may be issued by MPD or ABRA investigators pursuant to the authority in D.C. Code § 25-801(b) and the schedule of fines promulgated by the ABC Board under D.C. Code § 25-830.

⁷ “No person under the age of 21 shall be criminally charged with the offense of possession or drinking an alcoholic beverage under this section, but shall be subject to civil penalties under subsection (e) of this section.”

⁸ “No person who is under 21 years of age shall *purchase, attempt to purchase, possess,* or drink an alcoholic beverage in the District, except as provided under subchapter IX of Chapter 7.” (emphasis added).

⁹ “(c) (1) Except as provided in paragraph (4)(D) of this subsection, any person who violates any provision of this section shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine and suspension of driving privileges as follows
(e) (1) In lieu of criminal prosecution as provided in subsection (c) of this section, a person who violates any provision of this section shall be subject to the following civil penalties . . . “

in an ABC establishment is in possession of alcohol, the licensee is presumed to be in violation.

I recognize that there is nothing more important than protecting the safety and well-being of our citizens – particularly our young people. Miss Ford's death is a tragedy and we must do everything we can to protect everyone, most especially our youth, from such senseless violence. Thank you for the opportunity to testify. I welcome any questions you may have.

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